

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

JOHN F. SMITH,  
Plaintiff,

v.

No. CV-10-1030 CEG/LAM

ROBERT McCORD, and  
JEREMY STOREY, police officers  
employed by the City of Las Cruces  
Police Department, in their Individual  
Capacities,

Defendants.

**ORDER TO SHOW CAUSE**

**THIS MATTER** is before the Court *sua sponte* for an Order to Show Cause why this case should not be dismissed for failure to prosecute. Plaintiff filed his *Complaint for Deprivation of Civil Rights (42 U.S.C. § 1983) in the Form of Excessive Use of Police Force* on October 30, 2010. Plaintiff names two Las Cruces police officers - Robert McCord and Jeremy Storey - in his suit. Plaintiff served a copy of the summons and complaint upon Officer McCord on December 14, 2010. (Doc. 4). Officer McCord's answer to the complaint was therefore due no later than January 5, 2011. FED. R. CIV. P. 12(a)(1)(A)(i) ("A defendant must serve an answer . . . within 21 days after being served with the summons and complaint."). Officer McCord has yet to file an answer. It appears that Officer Jeremy Storey was never served with a copy of the summons and complaint.

FED. R. CIV. P. 4(m) provides:

If a service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time . . . .

More than 120 days have elapsed since the filing of the complaint, and Plaintiff has yet to effect service on Officer Storey. Additionally, nearly two months have passed since Officer McCord's answer was due and Plaintiff has ignored this omission. The inherent power of the Court to dismiss for lack of prosecution is well-established. *AdvantEdge Bus. Grp. v. Thomas E. Mestmaker & Assocs., Inc.*, 552 F.3d 1233, 1236 (10th Cir. 2009). Therefore, pursuant to FED. R. CIV. P. 41(b), Plaintiff is directed to show good cause within ten (10) days of the date of this notice, why this action should not be dismissed for failure to prosecute. Plaintiff is advised that this action will be dismissed thirty (30) days from the date of this Notice unless good cause is shown for its retention on the Court's docket.

A handwritten signature in black ink, appearing to read 'Carmen E. Garza', with a long horizontal line extending to the right.

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THE HONORABLE CARMEN E. GARZA  
UNITED STATES MAGISTRATE JUDGE